

82-141-I

ATTORNEY GENERAL
GREGORY H. SMITH

THE STATE OF NEW HAMPSHIRE

DEPUTY ATTORNEY GENERAL
DEBORAH J. COOPER



ATTORNEYS
LORETTA S. PLATT
DANIEL J. MULLEN
JAMES D. CAHILL, III
RONALD F. RODGERS
JEFFREY R. HOWARD
C. DANA BISBEE
GREGORY W. SWOPE
PETER T. FOLEY
STEVEN M. HOURAN
EVE H. OYER
DOUGLAS L. PATCH
JOHN A. MALMBERG
LESLIE LUDTKE

THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

ASSISTANT ATTORNEYS GENERAL
JOHN T. PAPPAS
E. TUPPER KINDER
JAMES E. TOWNSEND
ANNE R. CLARKE
MARC R. SCHEER
DONALD J. PERRAULT
MARTIN R. JENKINS
PETER W. MOSSEAU
BETSY S. WESTGATE
MARTHA V. GORDON
PETER C. SCOTT
EDWARD L. CROSS, JR.
MICHAEL A. PIGNATELLI
BRIAN T. TUCKER
PAUL BARBADORO
BRUCE E. MOHL

January 27, 1983

William T. Wallace, Jr., M.D., M.P.H.
Director of Public Health Services
Hazen Drive
Concord, New Hampshire 03301

Dear Dr. Wallace:

By memorandum dated November 20, 1982, you requested the advice of this office on whether private physician's offices, private hospitals, private clinics, or private nursing homes are covered by the law prohibiting smoking in certain designated areas, RSA 155:45 et seq.

The scope of the law is determined by the definition of its primary operative term "enclosed public places." That term is defined in RSA 155:45 II as "any enclosed, indoor area which is publicly owned or supported by tax revenues including, ... health care facilities ..." The term "health care facilities" is in turn defined in RSA 155:45 IV as "a facility which houses persons who minister to those in need of physical or emotional medical treatment or both." In spite of the difficult wording of that definition, it is relatively certain that the types of facilities about which you inquire would all be included within its scope. Thus the important issue will be whether the facility in question is "publicly owned or supported by tax revenues." Since your inquiry presupposes private facilities, they would be covered by the statute only if they were "supported by tax revenue."

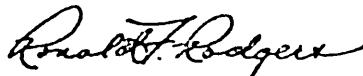
Unfortunately there is no indication, in either the statute or the legislative history, of what the legislature meant by the phrase "supported by tax revenues." Furthermore I am unaware of any relevant cases in which the courts of this state have



interpreted that phrase. Clearly a further definition of "supported by tax revenues" is needed in order to properly administer the statute. That can be accomplished either by legislation or by an exercise of the rule making authority granted to the commissioner of health and welfare in RSA 155:48.

I regret that a direct answer to your question does not exist, however, I hope that this explanation of the problem will provide some guidance towards its solution. If I can be of further assistance, please let me know.

Sincerely yours,



Ronald F. Rodgers
Attorney
Division of Legal Counsel

RFR:ab
#82-141-I